

**From:** [Boyd, Andrew](#)  
**To:** [Connery, Shannon](#)  
**Subject:** FW: RC/BC Meeting - IC Follow-Up Items / for FMC FOIA  
**Date:** Tuesday, November 10, 2015 3:33:20 PM  
**Attachments:** [FMC Draft ICIAP pages 12-13.pdf](#)

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**From:** Boyd, Andrew  
**Sent:** Tuesday, November 10, 2015 3:32 PM  
**To:** Boehr, Craig <Boehr.Craig@epa.gov>  
**Cc:** Ingemansen, Dean <Ingemansen.Dean@epa.gov>  
**Subject:** RC/BC Meeting - IC Follow-Up Items

Craig

In response to your request for info on UECA agreements and recorded notices of contamination, attached are a couple of pages from the FMC Draft Institutional Control Implementation and Assurance Plan that describes the notices and UECA covenants that have been recorded for the FMC site in Idaho. The FMC site is part of the Eastern Michaud Flats NPL Superfund Site. There are also several ponds that were closed under RCRA. As described in the attachment, a UECA covenant for part of the FMC site was recorded in 2010 in support of an EPA Ready for Reuse Determination. EPA signed the document and has the authority to enforce the restrictions.

Let me know if you have any questions, need additional info or copies of any of the instruments.

Andy

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### 3.0 INSTITUTIONAL CONTROLS AND ACCESS RESTRICTIONS

This section details the ICs currently applicable to and current access restrictions at the FMC OU and describes the ICs and access restrictions that will be implemented as required by the IRODA and UAO for RD/RA.

#### 3.1 IMPLEMENTED INSTITUTIONAL CONTROLS AND ACCESS RESTRICTIONS

##### 3.1.1 Current Institutional Controls

As described in Section 2.2.6.1 above, the FMC OU is within an area zoned “heavy industrial” by Power County or within the one-half mile buffer zone around the industrial zoned property. This prohibits any non-industrial use within the boundary of the buffer area. SRI Report Appendix A includes a map provided by Power County depicting the zoning, the one-half mile buffer, and the property ownership. SRI Report Appendix A also includes the Power County zoning ordinance. SRI Report Appendix A is included as Appendix A to this plan.

During 1995, FMC unilaterally filed *Covenants Restricting Use of Property* on FMC’s property within the FMC OU (with the exception of the Batiste Spring [SRIA Parcel 6]) that placed the following restrictive covenant on the FMC properties:

The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

These restrictive covenants are provided in Appendix C.

During 1999 to 2005, FMC filed a survey plat and a *Notice and Covenants Restricting Use of Property* with the Power County recorder’s office as a record of the type, location, and quantity of waste placed in the Closed RCRA Ponds (8S, 8E, the Phase IV ponds, 9E, 15S, 16S, 17 and 18 Cell A) and the Slag Pit Sump and the property use restrictions at the closure areas. FMC recorded the notices within 60 days of closure certifications for the above units and sent letters to the EPA Regional Administrator that provided EPA with the closure certifications, and copies of the survey plats and deed notices containing the property use restrictions. The survey plats were prepared and certified by a professional land surveyor registered in the State of Idaho. The deed notices notify in perpetuity any potential purchaser of the property that the land has been used to manage hazardous wastes, that land use is restricted under the 40 C.F.R. Part 265 Subpart G regulations, and that the survey plat was filed with the Power County recorder’s office. The land use restrictions include a prohibition against subsurface intrusion within the limit of the final cover and within 20 feet of the anchor trench. These deed notices and survey plats for the closed RCRA units are provided in Appendix C. Copies of these deed notices and survey plats were provided to the Shoshone Bannock Tribes at the time they were provided to EPA and again in 2010.

In 2006, FMC filed a survey plat and a *Notice and Covenants Restricting Use of Property* with the Power County recorder's office as a record of the type, location, and quantity of waste placed in the in the calciner ponds as described in 40 CFR 265.119(a). FMC recorded the notice and survey plat and transmitted copies of the survey plat and deed notice containing the property use restrictions to the Director of the Idaho Department of Environmental Quality (IDEQ). The survey plat was prepared and certified by a professional land surveyor registered in the State of Idaho. The deed notice and survey plat for the calciner ponds are provided in Appendix C.

In 2010, FMC recorded an *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act*, Idaho Code § 55-3001, *et seq.* on SRIA Parcels 4, 5 and 6 (Figure 3) to support the EPA-issued Ready for Reuse certification for these properties. This covenant is provided in Appendix C.

### 3.1.2 Current Access Restrictions

The FMC Plant Site and SUA and WUAs have a combination of fencing and locked gates around the property boundary and control unauthorized entry.

## 3.2 PLANNED INSTITUTIONAL CONTROLS AND ACCESS RESTRICTIONS

This section describes the ICs that are planned as part of the selected remedy at the FMC OU. The IC Relationship Matrix presented in Table 3 summarizes the implemented ICs described above and the planned ICs described below to demonstrate that the restrictions appropriately support achievement of the RAOs of the selected remedy.

### 3.2.1 Soil Remedial Action Institutional Controls

As shown on the IC Relationships Matrix, there are three (3) different sets of soil remedial action use restriction / IC objectives that will be applied to the RAs at the FMC OU. The specific RAs and the set of use restriction / IC objectives that will be applied to 1) RAs identified for ET caps where elemental phosphorus (P4) is known or suspected are described in subsection 3.2.1.1; 2) RAs identified for ET Caps where P4 is not present and RAs identified for gamma caps are described in subsection 3.2.1.2; and 3) FMC Northern Properties (RA-I and RA-J) are described in subsection 3.2.1.3. The set of use restriction / IC objectives that will be applied to the FMC Southern and Western Undeveloped Areas (not designated as RAs) are described in subsection 3.2.1.4.

#### 3.2.1.1 RAs Identified for ET Caps Where P4 is Present

Evapotranspirative (ET) caps will be placed on the RAs where elemental phosphorus (P4) is known or suspected to be present, specifically RA-B, RA-C, RA-F1, RA-F2 and RA-K (see Figure 5).

Institutional controls will be implemented and maintained that include restrictive covenants and/or environmental land use easements prohibiting activities that may disturb implemented